as widely speculative. His conduct from the point of view of commercial morality was deplorable, and an examination of all the relevant papers before us indicated most clearly that he was not a person who should readily be relieved of the consequences of bankruptcy.

His offer of composition for $700,000 was seemingly attractive because the payment was guaranteed, but it might well result, if approved, in his saving for himself from the wreck a considerable sum of money to the detriment not only of his creditors but also of the public. The difficulties that the Official Assignee would have in realising the debtor's assets was not a factor which could be decisive when weighed against the public interest and the necessity to maintain commercial morality.

On these grounds the appeals were dismissed.

Appeals dismissed.

CHIN CHENG HONG & ANOR. v. HAMEED & ORS.

[C. A. (Mathew, C.J. (F.M.), Murray-Aynsley, C.J. (S.), and Wilson, J.) May 12, 1953]

[K. L. — Civil Appeal No. 15 of 1952]

Partnership — Whether dissolved on enemy occupation where partners divided by line of war — Caveatable interest — Partners' right to lodge caveat against partnership land held in name of another partner.

The four respondents entered into a partnership agreement, the partnership being for a period of six years to expire on 15th June, 1942. The business was to be managed in pairs of two for each 18 months period. At the time of Japanese occupation of Malaya, two of the partners were in India. The partnership business was continued by Respondent No. 1 and, during the occupation period, a piece of land, amongst others, was acquired out of the partnership funds and registered in the name of 1st respondent. 2nd and 3rd respondents who were in India during the occupation period, returned to Malaya in early 1948 and on 26th May, 1948, lodged a caveat against the land registered in name of 1st respondent. By a consent decree dated 2nd July, 1948 the partnership amongst the respondents was dissolved and the assets ordered to be sold.

On 30th November, 1948 1st respondent entered into an agreement with the appellants for the sale of the land. The appellants brought an action for specific performance of the contract against 1st respondent to which the other respondents were joined as defendants on their own application. The trial Judge refused specific performance but awarded to the appellants damages against 1st respondent for breach of contract.

Held by Mathew, C.J. and Wilson, J., (Murray-Aynsley, C.J. (Singapore) dissenting): (1) the partnership was not dissolved on the occupation of Malaya by the Japanese but that it continued and was dissolved by decree in the partnership action made on 2nd July, 1948; (2) where land belonging to a partnership is registered in the name of an agent or one of the partners, the other partners have valid caveatable interests either as claimants of title or as claimants of registrable interests as undivided co-proprietors.

Case referred to:—

(1) *Hangkam Kwingtong Woo v. Liu Lan Fong* (1951) A.C. 707; (1951) 2 All E.R. 567.

COURT OF APPEAL.

F. G. Charlesworth (*K. C. Chan* with him) for the appellants.

B. K. Das for the 2nd, 3rd and 4th respondents.

1st respondent did not appear.

Cur. Adv. Vult.

Mathew, C.J. : — We are concerned in this appeal with only one piece of property which is Grant No. 5481 contained in the Register of Titles, Perak South, volume 30 folio 77. The appeal has been argued on submissions of law which were not taken before the learned trial judge. It is necessary before considering the arguments to set out the facts.

On 31st July, 1936, the four respondents entered into a partnership agreement for the purpose of taking over and carrying on the business called M. K. Mohideen Rowther. The agreement provided for the four partners to work in specified pairs for periods of 18 months each. The agreement was for 6 years, to expire on 15th June 1942 and, unless a new agreement was made the partnership would be wound up. Although it was provided that the first and third respondents and the second and fourth respondents should work together during their two 18 months periods of service in the business, the agreement was clearly varied, for the second and third respondents went to India in June 1940 and did not return to Malaya until 1948. The business was carried on throughout the occupation period by the first respondent.

In February 1948 the second and third respondents returned to Malaya, and a partnership action was started in the High Court and a consent order was made on 2nd July 1948 dissolving the partnership.

On 28th June 1943 the first respondent purchased the land held under Grant 5481 in his own name, and the transfer was registered on 22nd August, 1945. The payments for the purchase price of the property appear in the firm's books.

On 26th May 1948 a caveat was presented by the second and third respondents and duly registered on the following day. On the 30th November 1948 an agreement for sale was entered into between the first respondent and the appellants. In the action for specific performance of the agreement for sale brought by the appellants against the first respondent, the first respondent did not enter an appearance, and the second, third and fourth respondents were joined as defendants at their own request.

The learned trial judge in an oral judgment found that the property in question had been purchased by the first respondent out of monies belonging to the partnership, and that the property was held in trust for the partnership. The learned trial judge refused an order for specific performance, but held that the plaintiffs were entitled to damages which were to be calculated on enquiry by the Registrar. During the hearing before the learned trial judge Mr. Chan for the appellants made two admissions to the effect :—

(a) that the property the subject matter of this case belonged to the partnership, and
(b) that the property was held by the first respondent as trustee for all the partners.

On the appeal, Mr. Charlesworth for the appellants has submitted, and in my view successfully, that he is not bound by those admissions which, he argues, are erroneous in law.

In my view, three questions require to be determined on this appeal :—

(i) when was this partnership dissolved?
(ii) is the land held under Grant 5481 the property of the partnership or that of the first respondent?
(iii) what was the effect of the caveats put on the register by the second and third respondents?

The partnership agreement provided for the continuance of the partnership until 15th June 1942, on which day the partnership was to come to an end unless a new agreement was entered into. Clause 24 gives certain powers to the manager (at the relevant date the first respondent) in the event of a new agreement not being concluded.

By 15th June, 1942, Malaya had been occupied by the enemy, and all communications with India had ceased. There was no possibility of making a new partnership agreement, and it was impossible for the two partners who were absent in India to give their services in the running of the business. The first respondent continued to run the business, whether with or without the assistance of the 4th respondent is not clear.

It has been argued that the partnership was automatically dissolved on the occupation of Malaya by the Japanese. I find it difficult to accede to this proposition in view of the decision in *Hangkam Kwing-tong Woo v. Liu Lan Fong*[1], which draws a distinction between enemy occupied territory and enemy territory, a distinction which may well be applicable in this case where the first and fourth respondents remained in enemy occupied Malaya and the second and third respondents in India.

On 15th June 1942, when the partnership agreement was due to expire, the manager (first respondent) did not take any steps under clause 24 of the partnership agreement, but continued to run the business and for several years after the end of the war. That the other partners approved of his action is clearly shown from the consent order in the partnership action that the partnership be dissolved as from the 2nd July, 1948. On the 30th of November, 1948 the first respondent, despite the consent order in the partnership action and the caveat presented by the 2nd and 3rd respondents, entered into an agreement with the appellants for the sale of the land. The caveats of the second and third respondents had been presented on 26th May 1948 and were duly registered, and the appellants, when they entered into an agreement for sale with the first respondent, should have been aware of the caveat.

Clause 33 of the partnership agreement prohibits the purchase or sale of land, but the only effect is that any manager or partner who does so will have to make good personally any loss that arises. In my view, the property the subject matter of the suit was partnership property bought out of partnership moneys. Despite this prohibition the first respondent clearly thought it wise, as the value of money was falling, to invest part of the partnership funds in land.

I now come to the most difficult question on this appeal, which was raised in the amended memorandum of appeal and was not argued in the Court below. Mr. Charlesworth has argued that even if the partnership continued throughout the Japanese occupation and thereafter down to the dissolution of the partnership by order of the Court, and even if the property is partnership property, the second and third respondents had no interest in the property which could be protected by a caveat registered under section 166 of the Land Code. He contends that the caveat was a nullity, and there was no reason therefore why the learned trial judge should not have granted an order for specific performance.

The first question to be decided is whether the second and third respondents had a caveatable interest in the land at the time they presented this caveat. It must not be forgotten that although a partnership can own land, the land cannot be registered in the name of the firm, and registration can either be effected in the names of all the partners or in the name of some person (not necessarily a partner) as agent.

Section 166 of the Land Code confers caveatable interests on the following classes of interested parties :—

(a) grantor of instruments of trust;
(b) beneficiaries;
(c) trustees;
(d) persons claiming title;
(e) persons claiming registrable interest.

In these proceedings, the caveatable interests of the second and third respondents fall under (d) and (e)

or not at all. It seems to me that where a partnership asset is registered in the name of an agent or in the name of one partner, the other partners can call for a transfer to themselves at any time. They have a caveatable interest either as claimants of title or as claimants of registrable interests as un-divided co-proprietors. In my view, the second and third respondents had a valid caveatable interest on the date of entry of the caveat.

The next question to be decided is the position of the second and third respondents at the date of the agreement for sale and at the date of this suit. It is not necessary to consider this question except on the basis that the firm was solvent. That the firm was solvent can be deduced from the order of the Court sanctioning the sale of two businesses as going concerns and allowing the partners to bid for them. At the date of the agreement for sale and at the date of this suit, the partnership had ceased, and the second and third respondents were then in the position of co-purchasers, entitled to call for transfer of their undivided shares by the person in whose name they had taken the transfer from the vendor. These were registrable interests and therefore caveatable interests.

One has a certain sympathy for the appellants, as they bought from the registered proprietor. But they took a risk fortified perhaps by legal advice that the caveats presented and registered by the 2nd and 3rd respondents were un-enforceable in law.

For these reasons I would dismiss this appeal, and order that the deposit be paid to the respondents against their costs.

Murray-Aynsley, C.J. (S.) : — These proceedings arise out of a claim for specific performance. It appears that a partner held land registered in his own name which turned out to be partnership property. It has always been the law that a single partner could contract to sell partnership property and give a good title. As long as the purchaser has acted in good faith I do not see that the fact that the land was partnership property should be a reason for refusing specific performance. I do not think that the presence of a caveat makes any difference unless the caveator has a caveatable interest, which is not the case here. If anyone could have lodged a caveat at the material time it should be the receiver. To hold otherwise would be to convert the system of caveats into a device for clogging the register with notices of all kinds of interests. The object of the system of registration is to avoid this. If the decision appealed against stands it would be unsafe to deal with anyone who had ever been a partner. I think that the fallacy lies in treating partners as trustees. *Inter se* though partnership is a matter of contract, partners have some duties analogous to those of trustees. In dealing with those outside the partnership this does not hold good.

I would allow the appeal.

Wilson, J. : — I have had the opportunity of reading the judgment of the President. I am in agreement with it and have nothing to add.

Appeal dismissed.

THE ASSISTANT COMMISSIONER FOR LABOUR, KLANG, on behalf of APPATHURAI v. THE MANAGER, CARGO HANDLING CORPN., LTD.

[Workmen's Compensation (Taylor, J.) June 30, 1953]

[K.L. — Civil Appeal No. 14 of 1953]

Workmen's Compensation — Labour officer representing adult workman not litigant — Proceedings ought to be in workman's name.

A Government advocate cannot appear for a party in proceedings between subject and subject, where the Government has no real interest.

It is the duty of Courts and Commissioners to see that parties are properly cited and to record arguments and decisions on any objections taken.

WORKMEN'S COMPENSATION.

L. A. Massie (Federal Counsel) for the appellant.

H. E. P. P. Powell for the respondent.

Cur. Adv. Vult.

Taylor, J. : — This is an appeal from an order of the Commissioner for Workmen's Compensation, Selangor, awarding compensation for partial disability caused by an accident, to one Appathurai.

The proceedings were very badly framed. In the original application the workman was named as the applicant, and the respondent was stated to be the Manager of the Cargo Handling Corporation, Limited, of Port Swettenham. In the notice of appeal the Assistant Commissioner for Labour, on behalf of Appathurai, was alleged to have been the applicant, and the manager was made respondent, as before. To take the latter point first, it ought not to be necessary to point out to Commissioners for Workmen's Compensation that where a limited liability company is sued the company itself, the corporate body, must be the party. The manager may be a person on whom process can be served, but that does not make him the respondent. Citing of parties is something more than a technicality. Even in the most informal courts it ought to be understood that a decree is drawn up in the same names as the earlier proceedings so that unless the real defendant is named, the ultimate order will not be enforceable.